

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR HUGO GUEL-CONTRERAS,

Defendant.

No. CR 05-1017-LRR

**FINAL JURY INSTRUCTIONS**

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Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NUMBER \_\_\_\_\_**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NUMBER \_\_\_\_\_**

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

**INSTRUCTION NUMBER \_\_\_\_\_**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

**INSTRUCTION NUMBER \_\_\_\_\_**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

**INSTRUCTION NUMBER \_\_\_\_\_**

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

**INSTRUCTION NUMBER \_\_\_\_\_**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NUMBER \_\_\_\_\_**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.



**INSTRUCTION NUMBER \_\_\_\_\_**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

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**INSTRUCTION NUMBER \_\_\_\_**

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that witness Sergio Ramirez-Gomez has pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider that witness’s guilty plea as any evidence of this defendant’s guilt. You may consider that witness’s guilty plea to impeach the witness, to show the witness’s acknowledgment of participation in the offense, or to reflect on his credibility.

You have heard evidence that Sergio Ramirez-Gomez has received a promise from the government that his testimony will not be used against him in a criminal case. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the government's promise is for you to determine.

**INSTRUCTION NUMBER \_\_\_\_\_**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**INSTRUCTION NUMBER \_\_\_\_**

You have heard testimony that the defendant made statements to law enforcement. It is for you to decide: (1) whether the defendant made the statements and (2) if so, how much weight you should give to them.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

**INSTRUCTION NUMBER \_\_\_\_**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

**INSTRUCTION NUMBER \_\_\_\_\_**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NUMBER \_\_\_\_**

The Indictment in this case charges the defendant with two different offenses.

Under Count 5, the Indictment charges that between about January 2005 and February 2005, the defendant committed the crime of knowingly and intentionally combining, conspiring, confederating, and agreeing with other persons known and unknown to the Grand Jury to distribute a mixture or substance containing cocaine, a Schedule II controlled substance.

Under Count 9, the Indictment charges that on about March 2, 2004, the defendant committed the crime of knowingly possessing a fraudulent resident alien card.

The defendant has pleaded not guilty to each of those charges.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

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There is no burden upon the defendant to prove that he is innocent.



**INSTRUCTION NUMBER \_\_\_\_\_**

You are instructed that a mixture or substance containing a detectable amount of cocaine is commonly called “cocaine.”

**INSTRUCTION NUMBER \_\_\_\_**

The crime of conspiring to distribute cocaine, as charged in Count 5, has three essential elements, which are:

- One,* between about January 2005 and continuing to about February 2005, two or more persons reached an agreement or came to an understanding to distribute cocaine;
- Two,* the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached, or at some later time while it was still in effect; and
- Three,* at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

If you unanimously find the government has proved all of these essential elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 5; otherwise you must find the defendant not guilty of this crime charged under Count 5.

To assist you in deciding whether there was an agreement or understanding to commit the crime of distributing cocaine, you are advised that the elements of this crime are set out in Instruction Number \_\_\_\_.

**INSTRUCTION NUMBER \_\_\_\_**

The crime of distributing cocaine, as charged in the conspiracy under Count 5, has two essential elements, which are:

*One*, a member of the conspiracy intentionally transferred cocaine to another person; and

*Two*, at the time of the transfer, that member knew that the substance was cocaine.

Keep in mind that Count 5 charges a *conspiracy* to commit the distribution of cocaine, and not that the distribution of cocaine was actually committed.

**INSTRUCTION NUMBER \_\_\_\_**

In considering whether the government has met its burden of proving conspiracy, as alleged in Count 5, you are further instructed as follows:

The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is another defendant or whether that person is named in the Indictment.

The “agreement or understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

**(CONTINUED)**

**INSTRUCTION NUMBER \_\_\_\_ (Cont'd)**

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 5 existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the actions and statements of the defendant. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

In determining whether the alleged conspiracy existed you may consider the actions and statements of all the alleged participants. The agreement may be inferred from all the circumstances and the conduct of the alleged participants. In determining whether the defendant became a member of the conspiracy, you may consider only the acts and statements of the defendant.

If you have found beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the co-conspirators of the defendant during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant joined the conspiracy, for a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

**INSTRUCTION NUMBER \_\_\_\_\_**

You are instructed as a matter of law that cocaine is a Schedule II controlled substance. You must ascertain whether or not the substances in question as to Count 5 was cocaine. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

In determining whether the defendant is guilty of the offense charged under Count 5, the government is not required to prove a specific amount or quantity of cocaine. The government need only prove beyond a reasonable doubt that there was some measurable amount of cocaine involved.

For your information, one ounce equals 28.35 grams.

**INSTRUCTION NUMBER \_\_\_\_\_**

The offense charged in Count 5 involves the “distribution” of cocaine. The following definition of this term applies in these instructions:

The term “distribute” means to deliver a controlled substance to the possession of another person. The term “deliver” means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of “distribution” of a controlled substance and does not concern itself with any need for a “sale” to occur.

**INSTRUCTION NUMBER \_\_\_\_\_**

The crime of unlawful possession of a permanent alien registration card, as charged in Count 9, has three essential elements, which are:

- One*, on about March 2, 2004, the defendant knowingly possessed a false permanent resident alien card with the last three digits “082”;
- Two*, the defendant knew the card was forged, counterfeited, altered, falsely made, obtained by means of false statement or otherwise unlawfully obtained; and
- Three*, such card was of the type prescribed by statute or regulation for entry into or evidence of authorized stay or employment in the United States.

If you unanimously find the government has proved all of these essential elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 9; otherwise you must find the defendant not guilty of this crime charged under Count 9.

You are instructed as a matter of law that a permanent resident alien card is a document prescribed by statute or regulation for entry into the United States or as evidence of authorized stay or employment in the United States.



**INSTRUCTION NUMBER\_\_\_\_\_**

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NUMBER \_\_\_\_\_**

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

**INSTRUCTION NUMBER \_\_\_\_\_**

You will note the Indictment charges that the offenses were committed “between about” or “on about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

**INSTRUCTION NUMBER \_\_\_\_\_**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

**INSTRUCTION NUMBER \_\_\_\_\_**

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

**(CONTINUED)**

**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Finally*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

**INSTRUCTION NUMBER \_\_\_\_\_**

Attached to these instructions you will find two Verdict Forms. The Verdict Forms are simply the written notices of the decisions that you reach in this case. The answer to each Verdict Form must be the unanimous decision of the jury.

You will take these Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**LINDA R. READE  
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR HUGO GUEL-CONTRERAS,

Defendant.

No. CR 05-1017-LRR

**VERDICT FORM - COUNT 5**

\_\_\_\_\_  
We, the Jury, find the defendant, Victor Hugo Guel-Contreras, \_\_\_\_\_ of  
Not Guilty/Guilty  
the crime of conspiring to distribute a mixture or substance containing a detectable amount  
of cocaine, a Schedule II controlled substance, between about January 2005 and February  
2005, as charged in Count 5 of the Indictment.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR HUGO GUEL-CONTRERAS,

Defendant.

No. CR 05-1017-LRR

**VERDICT FORM - COUNT 9**

\_\_\_\_\_  
We, the Jury, find the defendant, Victor Hugo Guel-Contreras, \_\_\_\_\_ of  
the crime of knowingly possessing a fraudulent permanent resident alien card, on about  
March 2, 2004, as charged in Count 9 of the Indictment.  
Not Guilty/Guilty

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE